

Chanan Singh

Vs

State of Punjab

Criminal Appeal No. 283 of 1973

(Syed M. Fazal Ali, A. D. Koshal JJ)

24.01.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana, by which the appellant has been convicted under Section 304, Part I IPC and sentenced to six years' rigorous imprisonment. Five other accused who had been convicted by the Sessions Judge were acquitted by the High Court. This altercation arose out of an irrigation dispute while Gulzar Singh was trying to divert water on his land on June 26, 1971. The detailed facts are set out in the judgment of the High Court and it is not necessary for us to repeat them again.

2. Appearing for the appellant, Mr. Uma Datta raised a short point before us. He submitted that in view of the findings of fact arrived at by the High Court the conviction and sentence passed on the appellant cannot be sustained. In this connection, the counsel drew our attention to the following findings of the High Court :

It is thus evident that the version given by Gurmit Kaur and Haqiqat Singh in respect of their being present at the Government tube-well, in court, is not consistent with their earlier version. Thus it is difficult to hold that the eyewitnesses in this case have given the true version of the fight.

In view of the above discussion it is clear that the version given by Gulzar Singh that he was watering his land on June 21, 1971 at 8 a.m. is not proved to be correct.

The presence of injuries on the persons of the appellants show that there was a clash between them on one side and the complainant party on the other and as such the prosecution has not put forth the genesis and the manner of occurrence correctly and the origin of the fight and as such the version given by the prosecution cannot be held to be correct.

It is also not established from the record that both the parties came with the intention of fighting so it was also not a case of free fight.

3. In short the High Court has clearly found that the prosecution has not presented the true version of the occurrence and it is not possible for the Court to find how the occurrence originated and who was the aggressor. Admittedly, two persons on the side of the prosecution, namely, Gulzar Singh and Gurnam Singh had suffered one grievous injury each, similarly five persons on the side of the accused were also injured and two of them had grievous injuries. The High Court also found that it

was not a case of free fight. In these circumstances, therefore, it is difficult to hold that the appellant fired a shot from his gun merely to assault Gulzar Singh and not in self-defence particularly when the appellant himself had many injuries, one of which was grievous. It is true that the defence case also has not been accepted by the High Court but once there is a probability of the accused having acted in self-defence, that is sufficient to entitle him to an acquittal. Mr. Singh tried his best to take us through the findings of the Sessions Judge in order to satisfy us that it was a case of a free fight and, therefore, the appellant could be convicted for individual assault. The High Court, however, has given cogent reasons for disagreeing with the view of the Sessions Judge. Moreover, as many as five accused persons were acquitted on the reasoning's given by the High Court and the State did not choose to prefer any appeal against that judgment in this Court. The High Court having rejected the fundamental details of the prosecution version and having held that the true version of the occurrence was not presented by the prosecution, erred in upholding the conviction of the appellant for an individual assault by reconstructing a new case. In these circumstances, we are satisfied that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt. The appeal is accordingly allowed. The conviction and sentence passed on the appellant are set aside and he is acquitted of the charges framed against him.

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